

REMARKS

This Application has been carefully reviewed in light of the Final Office Action dated June 30, 2008 ("*Office Action*"). At the time of the *Office Action*, Claims 1-20 were pending and rejected in the Application. Applicants have amended Claim 12. Applicants submit that no new matter is added by these amendments. As described below, Applicants believe all claims to be allowable over the cited references. Therefore, Applicants respectfully request reconsideration and full allowance of all pending claims.

Finality of Rejection

Applicants respectfully request withdrawal of the finality of the final *Office Action* delivered June 30, 2008. The M.P.E.P provides guidelines for when a final rejection is proper on a second action:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

M.P.E.P. § 706.07(a) (emphasis added). In the present case, Applicants contend that within the *Office Action* dated June 30, 2008, the Examiner has introduced new grounds of rejection that were not necessitated by Applicants' amendment of the claims.

Specifically, in the previous Office Action mailed December 13, 2007, the Examiner rejected dependent Claim 5 as being anticipated under 35 U.S.C. § 102(b) by "BEA Web Logic Portal Deployment Guide," Version 4.4, May 2002 ("*BEA*"). In the subsequent Response to Office Action submitted by Applicants on March 13, 2008, Applicants amended Claim 5 by rewriting Claim 5 in independent form and argued the patentability of Claim 5, as originally presented, over *BEA*. The amendment to Claim 5 merely resulted in the claim elements recited in independent Claim 1, as originally filed, being added to Claim 5. The original claim elements of Claim 5 were unaltered, and the amendment to Claim 5 did not change the scope of Claim 5. Thus, the amendment to

Claim 5 did not result in the recitation of additional subject matter that would require a new search by the Examiner.

In the final *Office Action*, the Examiner issues a new rejection of Claim 5. Specifically, the Examiner rejects Claim 5 under 35 U.S.C. § 103(a) over *BEA* in view of Chapter 5 Assembling and Deploying Enterprise Applications. Thus, the rejection under § 103(a) is a new ground of rejection. However, since the scope of Applicants' Claim 5 was not changed in the Response to Office Action submitted on March 13, 2008, the new grounds of rejection provided by the Examiner in the final *Office Action* could not have been necessitated by Applicant's amendment to the claims. As such, Applicants contend that the Examiner has introduced a new ground of rejection to Claim 5, which was not necessitated by Applicants' amendment of the claim. Applicants respectfully submit that the new grounds of rejection should have been presented in a new non-final office action. Accordingly, Applicants submit that the finality of the final *Office Action* is improper and that the petitions branch would agree with Applicants on this issue.

For at least these reasons, Applicants respectfully request that the finality of the *Office Action* dated June 30, 2008, be withdrawn.

Objections to the Specification

The Examiner continues to object to the Specification on the basis that the title of the invention is not descriptive. As described in the previous *Office Action*, the Examiner objects to the Specification "because the legal words "system" and "method" should be removed." In the Response submitted on March 13, 2008, Applicants traversed the objection to the Specification on this basis. In the final *Office Action*, the Examiner states that "[a]t the time of allowance the Examiner will rename the invention." (*Office Action*, page 2). Applicants do not authorize any amendment by the Examiner to the title or to any other portion of the Application. Any attempt to amend the title without Applicants' authorization is not permitted by the M.P.E.P. (M.P.E.P. § 1302.04 stating "[n]o examiner's amendment, whether formal or informal, may make substantive changes to the written portions of the specification, including the abstract, without first obtaining applicant's approval).

Nevertheless, while it continues to be Applicants' position that M.P.E.P. § 606 indicates that amendment to the Title is not required in this case, Applicants have amended the title of the invention in this Response to Office Action in attempt to eliminate Applicants' and Examiner's disagreement over the title. Specifically, Applicants have amended the title, as follows:

AUTOMATICALLY DEPLOYING PROGRAM UNITS
TO A CLUSTER OF NETWORKED SERVERS

Applicants respectfully submit that the amended title is technically accurate and descriptive. The title includes fewer than 500 characters and does not include terms such as "new," "improved," "improvement of," or "improvement in." The title does not improperly begin with articles "a," "an," or "the." Accordingly, the amended title is in compliance with M.P.E.P. § 606.

For at least these reasons, Applicants respectfully request that the objection to the Specification be withdrawn.

Section 103 Rejections

The Examiner rejects Claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable over "BEA Web Logic Portal Deployment Guide," Version 4.4, May 2002 ("*BEA*") in view of Chapter 5 Assembling and Deploying Enterprise Applications.

Initially, Applicants note that while the Examiner has changed the rejection of Claims 1-16 from a § 102(b) rejection to a § 103(a) rejection, the Examiner continues to rely solely upon the disclosure of *BEA* to reject each and every element of Applicants' claims. Chapter 5, titled "Assembling and Deploying Enterprise Applications," is merely one chapter within *BEA* and was cited by the Examiner in the previous *Office Action*. In some instances, the Examiner refers specifically to "*BEA*," and in other instances, the Examiner refers to "*BDG*." (For example, see *Office Action*, page 3, rejection of Claim 1). However, it appears that the Examiner uses the two acronyms interchangeably when referring to similar pages of Chapter 5 of *BEA*. Accordingly, while the basis of the

rejection has changed from § 102(b) to § 103(a), the substance of the rejection remains the same. Applicants respectfully request reconsideration and allowance of Claims 1-16 for the reasons discussed below.

A. Claims 1-4, 6-18, and 20

In the previous Response to Office Action submitted by Applicants on March 13, 2008, Applicants demonstrated that *BEA* does not disclose the features recited in Applicants' Claim 1. The Examiner did not respond to Applicants' arguments in the final *Office Action* since a new ground of rejection was used. However, Applicants believe that Applicants' previous arguments continue to have merit. Thus, Applicants reiterate Applicants' arguments made with regard to *BEA* in the previous Response to Office Action.

Specifically, it continues to be Applicants' position that *BEA* does not disclose, teach, or suggest "automatically, and without user input, generating deployment descriptors from the information retrieved from the deployment server," as recited in Claim 1. *BEA* is a user guide providing instructions to users and describing the steps necessary for deploying applications. In the *Office Action*, the Examiner continues to rely on page 5-3 of *BEA* for disclosure of Applicants' step of "automatically, and without user input, generating deployment descriptors." However, the cited portion of *BEA* merely discloses that "[t]o create deployment descriptors for your enterprise application," a user must copy reference files, modify *application.xml*, and modify *application-config.xml*. (*BEA*, page 5-3). To copy the reference files, *Bea* discloses that the user must "create a directory named META-INF" and identifies two files that must be copied to the user's META-INF directory. (*BEA*, page 5-4). To modify the "application.xml" file, *Bea* discloses that the user must use a text editor to modify the application name, the declarations for web applications, the declarations for EJBs, and the declarations of security roles. (*BEA*, page 5-4). Finally, to modify the "application-config.xml" file, *Bea* discloses that the user must "use a text editor to remove declarations for MBeans that configure services you do not use." (*BEA*, page 5-7). Thus, each step disclosed in *Bea* for creating deployment descriptors requires a user to perform a specific task. Accordingly,

BEA does not disclose, teach, or suggest “automatically, and without user input, generating deployment descriptors,” as recited in Claim 1. Additionally, *BEA* does not disclose, teach, or suggest that such deployment descriptors are automatically generated “from the information retrieved from the deployment server,” as recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 1, together with Claims 2-4, 6-10, and 17-18 that depend on Claim 1.

The Examiner also relies on *BEA* to reject independent Claims 11 and 13. Applicants respectfully submit, however, that *BEA* does not disclose, teach, or suggest each and every element of Applicants’ independent Claims 11 and 13. For example, Claim 11 recites “automatically, and without user input, generating deployment descriptors from the information retrieved from the deployment server.” As another example, Claim 13 recites “container management module operable to: . . . automatically, and without user input, generate deployment descriptors from the information retrieved container information.” Thus, for reasons analogous to those discussed above with regard to Claim 1, Applicants respectfully submit that *BEA* does not disclose, teach, or suggest each and every element set forth in Applicants’ independent Claims 11 and 13.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 11 and 13, together with Claims 12 and 20 that depends on Claim 11 and Claims 14-16 that depend on Claim 13.

B. Claims 5 and 19

In the previous Response to Office Action submitted by Applicants on March 13, 2008, Applicants demonstrated that *BEA* does not disclose the features recited in Applicants’ Claim 5. It continues to be Applicants’ position that *BEA* does not disclose, teach, or suggest “wherein the retrieving comprises . . . automatically retrieving information related to one or more virtual hosts in the cluster,” as recited in now independent Claim 5.

In the *Office Action*, the Examiner continues to identify step 5(b) on page 5-24 of *BEA* as disclosing the elements of Claim 5. However, the cited portion merely relates to a process that is described for performance by a user to add a ToolSupport application.

(*BEA*, page 5-24). Specifically, the cited portion states that if a user wishes to “deploy multiple enterprise applications onto the same server instance, you must modify the URI of the WebLogic Portal Administration Tools Web application so that each one uses a unique address.” (*BEA*, page 5-24). To do so, *BEA* discloses that the user must open an identified application using a text editor and then manually “[f]ind the XML element that declares the WebLogic Portal Administration Tools Web application” and “[m]odify the value of the <context-root> element . . . [to] encode the name of the parent enterprise application in the WebLogic Portal Administration Tools Web application.” For example, a user must replace “<context-root>tools</context-root>” with “<context-root>tools_BankApp</context-root>.” Because the disclosed steps merely relate to the user modification of a file for the deployment of multiple applications on the same server, and not to “automatically **retrieving** information related to one or more **virtual hosts** in the cluster,” Applicants submit that *BEA* does not disclose, teach, or suggest each and every element recited in now independent Claim 5. In fact, Applicants submit that the cited portion is devoid as to any discussion of “retrieving information” or “virtual hosts.”

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 5, together with Claim 19 that depends on Claim 5.

No Waiver

Additionally, Applicants have merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner’s rejections.

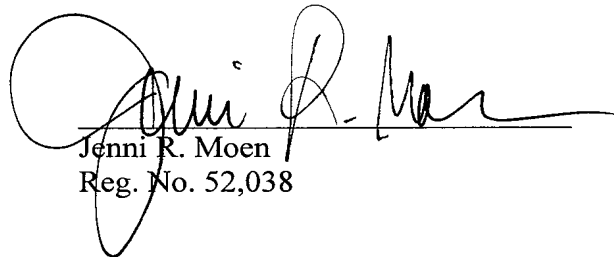
CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Jenni R. Moen, Attorney for Applicants, at the Examiner's convenience at (214) 953-6809.

Applicants believe that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Jenni R. Moen
Reg. No. 52,038

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Correspondence Address:

at Customer No. **05073**